

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 555 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KANAIYALAL JIVAJI MARWADI

Versus

STATE OF GUJRAT

Appearance:

MR ASHOK D SHAH for Petitioner
MR S.R.DIVETIA, APP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE H.L.GOKHALE

Date of decision: 06/02/97

ORAL JUDGEMENT

(Per N.J. Mehta, J.)

The accused-appellant came to be convicted for offences punishable under section 17 of the NDPS Act and section 66(1)(b) of the Bombay Prohibition Act in Sessions Case No.295 of 1990 by the learned Addl. City Sessions Judge of Court No.21, Ahmedabad, by his judgment dated 19th July 1991. He therefor awarded R.I. for 10 years and fine of Rs.1,00,000 and in default to undergo R.I. for one year for the offence under NDPS Act and was pleased not to award any separate sentence for offence under Bombay Prohibition Act.

2 The case of the prosecution was that on the night of 9-10th June 1990 near Asarwa bridge the police party had conducted the combing operations and under that process the vehicular traffic was being monitored and the vehicles were being stopped and checked. One such vehicle happened to be autorickshaw bearing No.GRU 38. It was stopped at Asarwa bridge and from the search of its driver nothing was found but from the passenger who is present accused a bag containing 750 grams of powder which ultimately found to be opium was found. A key was also found from the accused person which appears to be a house key and therefore after completing the formality at Asarwa bridge the police went to Chamanpura, Meghaninagar, where the house was situated. With the help of the key it was opened and during the search three different quantities of powder was found which was later found to be opium. But, on the ultimate analysis from the total quantity of powder of roughly 3,000 grams, only 463 grams turned out to be opium.

3 The panchas by and large supported the prosecution version. They are Karsanji Ishwarji Thakore and rickshaw driver, Maheshbhai Roopsinh at Exh.30 and 32 respectively. The panchnama is produced at exh.31. The remaining are police officer and one Mr B.S. Bhatt who happens to be Forensic Science Laboratory expert.

4 An effort was made to show that the panch happens to be related to rickshaw driver and accused was never there in the rickshaw and the said stand was taken before the trial Court. Further it was suggested that it was the rickshaw driver who was carrying the contraband articles and in order to save him the said panch who is related to him was called as a selected panch and fastened the liability on the accused. Except for vaguely suggesting that on account of enmity, he has falsely been implicated, the accused hardly produced any

evidence before the trial Court. The same would have been the situation before us and the conviction order of the trial court would have been confirmed. However, only one thing is coming in the way of the prosecution and it is in the form of forwarding note exh.12 and exh.13 and 14 originating from the forensic science laboratory. The forwarding note is signed by the Police Inspector J.R. Prajapati who conducted the operation and seized the offending articles. As is required under the Rules on the last page of the forwarding note a facsimile of the seal is given which is clearly legible. In the centre is the national emblem and it was surrounded in circular form by the words "Shahibaug Police Station Ahmedabad" in Gujarati language. In other words, the seal in the aforesaid manner was of Shahibaug Police Station, Ahmedabad City, as written in Gujarati language. The muddamal article has been received by the FSL on 11th June 1990. Exh.14 of the FSL report clearly indicates that all the 11 articles containing the seal of Police Inspector, Shahibaug Police Station, Ahmedabad City have been received but it is also mentioned that the seals were in English language.

5 This glaring discrepancy is apparently obvious. The forwarding note contained the seal in Gujarati language while the seals which were embossed on the parcels received by the FSL were in English language. This destroys the identity of the muddamal articles. The prosecution has failed thus to establish that what was seized and kept in sealed condition was the very article that was sent by the investigating agency for analysis purpose to the laboratory. Once their identity is thus destroyed, a serious doubt is created about the authenticity of the article finally analysed. The benefit of the doubt so created would go to the accused. Accordingly, the order of conviction and sentence is set aside. The accused is given the benefit of doubt. The appeal is allowed and the appellant is ordered to be set at liberty forthwith if not required in any other case.

(mohd)